

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1334 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DY. EXECUTIVE ENGINEER

Versus

RAVAJIBHAI SHANKERBHAI BHOJANI

Appearance:

Ms Binoda Gajjar for Petitioner

MR PC MASTER for Respondent No. 1

NOTICE SERVED for Respondent No. 7

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 16/11/98

ORAL JUDGEMENT

RULE. Mr P C Master, learned Advocate waives service of Rule for respondent No.1.

Heard the learned Advocates for the parties.
This Special Civil Application has been filed by the Deputy Executive Engineer, Road Division, PWD Office, challenging the award dated 15.5.1995 passed by the

Judge, Labour court, Nadiad in Reference (LCA) No.391/90 whereby the respondents have been directed to be reinstated with full backwages. Necessary facts are that the respondents No. 1 to 6 who were working as temporary labour in the year 1983. Their services were terminated in December 1984. The respondent workmen raised industrial dispute which culminated in Reference to Labour Court, Nadiad. The Labour Court found the order of termination illegal being in violation of provisions of the Industrial Disputes Act and directed for reinstatement with full backwages.

2. The learned AGP contends that the Tribunal has committed error in not considering that none of the respondents have completed 240 days. It is also contended that though the Counsel for the State was not present, the Officer concerned was present and in spite of his request to hear him, the learned Judge proceeded ex-parte.

3. It is significant to notice the negligence on the part of all concerned in the matter:

(i) The services of the respondent workmen were dismissed on 20.12.1986. They raised demand for the first time as late as on 10.1.1989.

(ii) The State Government was negligent in neither filing written statement nor producing witnesses before the Labour court.

(iii) The Judge of the Labour Court has failed to conduct the proceedings in an effective manner, which has led to ex-parte award. He could have evolved an appropriate mechanism to secure the presence of the Government officials. Public money cannot be distributed to a person not entitled only for the reasons of the negligence on the part of the Government official.

(iv) In spite of the fact that the award was passed as back as on 15.5.95, the same has been challenged before this Court as late as on 23.2.1998. Thus there is negligence on the part of the concerned Executive Engineer and all other concerned Officers of the Department.

It is pointed out by the learned AGP that the delay in challenging the award was on account of the fact that the State Government had filed Application under Rule 26-A of

the Gujarat Industrial Disputes Rules for setting aside the award. The said application was rejected in the year 1997. Copy of the said order has not been placed on record. Therefore, there is negligence on the part of the learned AGP also in not challenging the said order and explaining the delay. The contention of the learned AGP is that the respondents have not worked for 240 days and they were only casual labourers. It is a material question which is required to be examined. If the respondent-workmen were casual labourers and they have not completed 240 days, they would not be entitled to backwages. Thus, ends of justice would meet if the matter is remanded to the Labour Court for rehearing of the case on payment of cost.

4. In view of the aforesaid, the award dated 15.5.1995 passed by the Judge, Labour Court, Nadiad is quashed and set aside. The parties shall appear before the said Court on 7.12.1998. The Judge, Labour Court shall decide the entire matter latest by 31.3.1999. The State Government, through its officer, shall submit written statement on the first date of hearing i.e. on 7.12.1998. On the first date of hearing, the petitioner shall pay the cost to each respondents a sum of Rs.3000/i.e. in total Rs.21,000/-. This amount shall be recovered from officers concerned found negligent for the ex-parte award within a period of six months and report to this Court.

Rule made absolute to the aforesaid extent.

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msp.